

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

DANIEL L. FIEVEZ, a single man,

Plaintiff,

v.

CITIBANK, N.A., as ALLEGED TRUSTEE OF  
THE WAMU SERIES 2007-HE3 TRUST;  
JPMORGAN CHASE BANK, N.A., Alleged  
Trustee of the loans and other assets of  
WASHINGTON MUTUAL BANK, FA,  
formerly known as Washington Mutual Bank,  
FA (the "Savings Bank") from the Federal  
Deposit Insurance Corporation, acting as receiver  
for the Savings Bank, and pursuant to its alleged  
authority under the Federal Deposit Insurance  
Act, 12 U.S.C. § 1821(d), A Foreign National  
Banking Association; WASHINGTON  
MUTUAL BANK, formerly known as  
Washington Mutual Bank, FA; FEDERAL  
DEPOSIT INSURANCE CORPORATION,  
Alleged Receiver for the Washington Mutual  
Bank; and NORTHWEST TRUSTEE  
SERVICES, INC., an active Washington  
Corporation,

Defendants.

No. C13-880 RSM

ORDER GRANTING MOTIONS  
TO DISMISS

This matter comes before the Court on JPMorgan Chase Bank, N.A. ("Chase's") and  
CitiBank N.A.'s ("Citi's") Motion to Dismiss Under Fed. R. Civ. P. 12(b)(6) (Dkt. # 7),  
which is joined by Northwest Trustee Services, Inc. ("NTS") (Dkt. # 8), seeking an order  
dismissing all of Plaintiff's claims against Chase, Citi, and NTS. The Court has considered

1 the motions and its exhibits, as well as all papers filed in support of and in opposition to the  
2 motion. The Court finds as follows:

- 3 1. “Failure to follow a district court’s local rules is a proper ground for dismissal”  
4 if, prior to dismissal, the district court evaluates five factors. *Ghazali v. Moran*, 46  
5 F.3d 52, 53 (9th Cir. 1995). Courts must explicitly consider (1) the public’s interest in  
6 expeditious resolution of litigation, (2) the court’s need to manage its own docket, (3)  
7 the public policy favoring disposition of cases on the merits, (4) the risk of prejudice  
8 to the defendant, and (5) the availability of less drastic sanctions. *Id.*

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10 Although Plaintiff filed a response brief to Chase and Citi’s motion, the  
11 response was filed outside the deadline imposed by LCR 7(d). The untimely response  
12 does not address NTS’s motion. Pursuant to LCR 7(b)(2), “[i]f a party fails to file  
13 papers in opposition to a motion, such failure may be considered by the court as an  
14 admission that the motion has merit.” The Court considers Plaintiff’s failure to timely  
15 file a response to the Citi/Chase motion, and failure to respond to the NTS motion as  
16 an admission that the motions have merit.

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18 The caption of Plaintiff’s untimely response brief identifies the brief as the  
19 “Declaration of Daniel L. Fievez in Opposition to Defendants JPMorgan Chase Bank,  
20 N.A. and Citibank, NA’s Motion to Dismiss Under Fed. R. Civ. P. 12(b)(6).” Dkt. #  
21 10. LCR 10(e)(2) requires that each pleading, motion, or other filing shall contain “a  
22 title indicating the purpose of the paper and the party presenting it.” Therefore, the  
23 response brief was incorrectly titled as a declaration and thus failed to satisfy LCR  
24 10(e)(2). Plaintiff also filed a “Declaration of Daniel L. Fievez” (“Fievez  
25 declaration”). Dkt. # 11. Plaintiff’s response brief is composed almost entirely of  
26 identical text to that contained in the Fievez declaration, the contents of which  
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1 improperly detail factual allegations extraneous to those set forth in the complaint.

2 *Compare* Dkt. # 11 with Dkt. # 10. Moreover, the response brief fails to meaningfully  
3 address any of the legal arguments set forth in Defendants’ motions to dismiss,  
4 including Defendants’ argument that *res judicata* bars the asserted claims.

- 5 2. While courts heavily favor adjudication on the merits of a case, Plaintiff’s  
6 disregard for the Court’s time and resources is unfailing. In Plaintiff’s 2011 related  
7 case, *Fievez v. Washington Mutual Bank*, Case No. C11-1456-RAJ (W.D. Wash.  
8 2011), Mr. Fievez also failed to file a timely response to Defendants’ motion to  
9 dismiss. There, Mr. Fievez filed an untimely declaration, “most of which [was]  
10 unrelated to the issues presented in the Defendants’ motion to dismiss.” *Id.* (Dkt. # 13,  
11 n.1). The Court “nevertheless reviewed Mr. Fievez’s statements given the court’s  
12 preference for resolving cases on their merits.” *Id.* Ultimately, the Court dismissed the  
13 claims as time-barred. *Id.*

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15 In the prior case, Mr. Fievez detailed many of the same factual allegations that  
16 are alleged in the present complaint, and both cases concern Mr. Fievez’s default on  
17 his mortgage. The doctrine of *res judicata* “has the dual purpose of protecting litigants  
18 from the burden of relitigating an identical issue with the same party or his privy and  
19 of promoting judicial economy by preventing needless litigation.” *Collins v. D.R.*  
20 *Horton, Inc.*, 505 F.3d 874, 880 (9th Cir. 2007). Defendants contend that Mr. Fievez  
21 had the chance to litigate the current theories of liability in the 2011 complaint against  
22 the same Defendants. Plaintiff has entirely failed to address Defendants’ arguments  
23 that the present claims could have been brought against these Defendants in 2011.

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25 Here, Plaintiff—who is represented by an attorney and was represented by the  
26 same attorney in the prior action—has failed to timely and appropriately prosecute two  
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1 related cases before this Court. Failure to address the opposing party's legal arguments  
2 imposes a burden on both the Court and the public as it usurps judicial resources from  
3 those parties that actively seek to resolve their disputes. As a failure to file an  
4 opposition to a motion to dismiss may be construed as an admission that dismissal is  
5 warranted, dismissal is the appropriate sanction.

6 3. Accordingly, the Motions to Dismiss (Dkt. ## 7, 8) are GRANTED.  
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8 DATED this 14<sup>th</sup> day of November 2013.  
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12 RICARDO S. MARTINEZ  
13 UNITED STATES DISTRICT JUDGE  
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